

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 219 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANSUKHLAL V SOLANKI

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR KETAN A DAVE for Petitioners

MR VJ DESAI for Respondent No. 1

None present for Respondents No. 2 to 23

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/06/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties and perused the Special Civil Application.

2. The petitioners, in all six, employees of the Gujarat Electricity Board, filed this Special Civil Application before this Court and prayer has been made for setting aside of the order dated 11-8-1980 passed by the Superintending Engineer, Porbandar, seeking to

promote the respondents No.3 to 24 as Sr. Accounts Clerks. Further prayer has been made by the petitioners in the Special Civil Application for the directions to the respondents to promote them before promoting the respondent-employees by applying preference rule contained in G.S.O. No.470 dated 9-6-1959 so as to give preference to the petitioners over respondents No.3 to 24 in the matter of promotion to the post of Sr. Accounts Clerk.

3. The submissions made by the learned counsel for the petitioners as well as the facts relevant to this Special Civil Application are not required to be taken in detail for the simple reason that none of the petitioners suffered any monetary loss or loss of seniority or loss of promotion in the matter, and as such, this petition deserves to be dismissed. This Court is not under an obligation to decide the academic point. The reason is very obvious. If this Court is not able to decide the matter of the real grievance of the parties for years together then consumption of the valuable time of this Court to decide the academic matters will cause serious injustice to the persons whose matters are pending for hearing for years together in this Court.

4. It is true that the respondent-Board had introduced a scheme of giving preferential promotion from the cadre of Junior Clerks and other categories to the post of Sr. Accounts Clerk on their passing of the prescribed examination. It is not in dispute that otherwise the promotions have to be made on the basis of seniority-cum-merit. To encourage the youth and for incentive to the job possibly this scheme of giving preferential promotions to the Jr. Clerks who passed the aforesaid examination had been introduced. However, it is not necessary to dwell on any more on this issue as this policy is not under challenge before this Court. The petitioners have passed the said test and they have made a grievance that they should have been given the promotion in preference to the respondents No.3 to 24 now 23 as the name of respondent No.24 has been struck off. Challenge has been made to the order of the promotions of these private respondents. It is not in dispute that all the petitioners have been given the pay scale of Sr. Accounts Clerk with effect from the date of completion of their nine years' service in the category of Jr. Clerk. The day on which the respondents No.3 to 23 have been promoted on the post of Sr. Accounts Clerk, all the petitioners except one were already working in the pay scale of Sr. Accounts Clerk. The petitioners in Para No.4 of the Special Civil Application have admitted that

the petitioners No.1 to 5 have been given the benefit of higher pay scale without actual posting on the higher post in view of their having completed nine years' service in the pay scale of Jr. Clerk. Only petitioner No.6 has been given the benefit of Sr. Accounts Clerk with effect from 1-12-1980. So except the petitioner No.6 all the other petitioners are working in the pay scale of Sr. Accounts Clerk. The petitioners are claiming the promotion from retrospective effect i.e. from the day on which they passed the examination. All the petitioners have passed the examination in August, 1976. All those persons who passed the said examination and promoted during the period from 1976 to 1980 have not been impleaded as party and if this prayer of the petitioners is accepted then it will amount to giving them the seniority over those persons, which normally should not be done by this Court behind the back of those persons.

5. Otherwise also, the promotion in the higher category has two purposes. First, it gives the monetary benefits to the promotee and second, it gives the requisite experience for further promotion to the next higher post, if it is so provided. So, first part relates to the monetary benefit and second part relates to the eligibility to be acquired for further promotion and third important part is also there of the seniority in the higher category for the purpose of further promotion. So far as the first part is concerned, as observed earlier, all the petitioners were getting the monetary benefit in the pay scale of Sr. Accounts Clerk earlier to the respondents No.3 to 23 except one petitioner. So far as the other two components are concerned, it is suffice to say, on which there is no controversy also, that none of the respondents have been given the promotion to the next higher post earlier to the petitioners. On the other hand, as it comes out from the document filed by the respondents at page No.64 of this petition, which is not controverted by the petitioners, all the petitioners have been promoted to the next higher post of Dy. Superintendent Accounts/Assistant Accountant in the years 1985, 1987 and 1990. So they have not suffered any further promotional loss. The petitioners were promoted as Sr. Accounts Clerk in 1982, 1985, 1987 and 1989, but they got their promotions to the next higher post within a reasonable proximity of time. As it comes out that the petitioner No.1 was promoted to the post of Sr. Accounts Clerk on 11-3-1987, but next promotion had come to him on 27th October, 1987. Likewise, the petitioner No.6 has been promoted on the post of Sr. Accounts Clerk on 12-1-1989

and next promotion had come to him in the year 1990. So for all these years, the petitioners were getting the pay scale of Sr. Accounts Clerk, but the actual promotion would have been given to them later in point of time than the respondents No.3 to 23, but they have not suffered any loss whatsoever of seniority or of the promotion to the next higher post.

6. The counsel for the petitioners despite of repeatedly asked by the Court to show how any of monetary loss in the cadre of Sr. Accounts Clerk or further promotional loss has been suffered by the petitioners, is unable to give any reply. So in substance, no grievance whatsoever of the petitioners survive.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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